



House Bill 2647

House Judiciary Committee

March 16, 2015

Chair Barker and members of the House Judiciary Committee thank you for the opportunity to provide written testimony with respect to House Bill 2647. My name is Kevin Christiansen, and I am the Government Affairs Director for the Oregon Bankers Association (OBA). The OBA serves the depository banks operating in the State of Oregon. Currently, there are 51 banks in Oregon, 27 of which are headquartered in Oregon, 24 of which are state-chartered banks with the State of Oregon's Department of Consumer and Business Services (DCBS) serving as their primary regulator along with the Federal Deposit Insurance Corporation (FDIC). The principal mission of the OBA is to be the voice of Oregon banking and to support the opportunity for financial service providers of all sizes to be viable and successful in order to meet the financial services needs of their diverse customers and communities across the State of Oregon.

Before you today is House Bill 2647 which has been labeled the Privacy Expectation Afterlife Choices Act (PEAC). The bill provides a narrow and restrictive approach to the handling of digital assets upon an individual's death. It provides that electronic communication services and remote computing services may, but are not required to, disclose records and other information pertaining to a person's electronic communications, but only if the person is deceased, and then only to the executor or administrator of the person's estate. Disclosure is permitted if the executor/administrator gets a court order containing specified findings. Even where a court order is obtained, the communications or computing service cannot be compelled to disclose digital records if the deceased user expressed a different intent by, for example, affirmatively indicating through a setting within the product or service how the user's information may be treated after a set period of inactivity or other event.

OBA has several concerns with respect to the proposed legislation. Those concern including the following:

- PEAC addresses access for the administrators of decedents' estates, but not for conservators, trustees, or agents under a POA. This is especially concerning in the context of a trust, a vehicle that many people use in their estate plans to avoid probate.
- The legislation changes the rule from access unless prohibited by the account holder, to access only if expressly permitted by the account holder or ordered by a court.
- Requiring the entry of a court order adds extra cost and time to the process of settling an estate.

- The proposal would allow a provider to deny access to a fiduciary if it would be unduly burdensome to the electronic communication service or remote computing service.
- PEAC would require a decedent's estate to indemnify the provider prior to any release of information.
- Oregon's small estate affidavit process is not considered in the bill. The small estate process allows for the settlement of small estates (less than \$275,000 in assets -- no more than \$200,000 of which can be real property and no more than \$75,000 in personal property). Requiring a court order would add unanticipated costs to those with small estates.
- PEAC could allow the denial of access to any assets that have only sentimental value (i.e., family photos or correspondence).

Bankers who serve as fiduciaries and trust officers have heard numerous stories of individuals that keep much of their lives on their computer. Difficult situations arise for fiduciaries when they are not able to gather and disburse all assets, digital or otherwise, when an individual passes away or becomes a protected person under the conservatorship law.

As an example, one banker reported a recent case in which the banker had a decedent who was writing a book. The manuscript was stored on his computer. He had a trust, so no probate was necessary. Fortunately, the decedent had trusted his children enough to give them the password to access his work. If not, it would have been necessary to open a probate to get an order, that the service provider may or may not have been required to honor, to retrieve his work. Not only would this work have sentimental value, but could have monetary value if sold.

OBA urges the committee to move slowly with respect to House Bill 2647. A variety of important concerns raised by those representing and acting as fiduciaries should be addressed before the bill moves forward.

Thank you for your consideration with respect to House Bill 2647.